

Confidential Facts – Round 2 -- County of Mirabeau

The County of Mirabeau, bolstered by the *Waste Management* decision, thinks it can tag Sainte Devote with a significant percentage of liability for the site cleanup. The County's primary goal should be to get Sainte Devote to agree to percentage allocation, using the Gore factors.

The County suspects, however, that Sainte Devote, a public corporation with a board of directors, might ultimately refuse to an open percentage allocation. Future estimates of costs at the site could prove incorrect in time, and Sainte Devote may not want to expose itself to unknown future liabilities. However, the County feels strongly that the existing cost estimates are accurate and liability is not likely to exceed \$20 million total for the site.

Jurisdiction

The County expects that Sainte Devote will argue that there is no jurisdiction to sue the Monaco based company in California. Cal-Sainte Devote was hopelessly undercapitalized from the start to deal with the significant environmental liabilities it incurred here in California. Mr. Gascon Massanet repeatedly traveled from Monaco to California to supervise mining operations, including giving instructions on disposal of mining wastes. Sainte Devote purposely availed itself of California jurisdiction.

In addition, the County has heard rumors that Sainte Devote is in California right now, scoping out new mining properties. The gold market has gone back through the roof and Sainte Devote is in the market for a new mine. Word has it that Sainte Devote might even be interested in the Lucky Strike property. You may want to test the waters on this.

Because of the County's limited resources, the Lucky Strike property has not been scoped for its ore reserves. Its value in terms of gold is unknown, but even without the gold it has been appraised for tax purposes. The appraiser valued it at \$250,000. With gold, it could be worth up to \$5 million. If Sainte Devote is interested in this parcel, you will fly past the jurisdiction issue and make some money at the same time. Try to get it interested in a purchase and to get as much money as possible.

You need to get past the jurisdiction issue quickly in negotiations. If Sainte Devote simply sticks to the jurisdiction issue in an effort to avoid all liability, there will be no way to reach agreement on the allocation issue. But, in the end, jurisdiction should play some factor in reducing Sainte Devote's liability, because if you have to sue the company in Monaco, the costs will be exorbitant, and Monaco courts are likely to treat their local businesses very favorably.

As-Is Purchase

Sainte Devote will likely argue that the County purchased the property "as is" and that it got a great bargain by receiving developable land for \$1. Like jurisdiction, the "as is" purchase language could shut down all negotiations for both parties, and would just lead to costly litigation, that will accomplish nothing for either side. Again, it is a factor that should reduce Sainte Devote's ultimate liability.

Allocation

The County wants an allocation for Sainte Devote in the range of 60 to 80 percent, recognizing that a 100 percent allocation would not be a settlement, but a capitulation. The higher the percentage, the better. A percentage allocation is definitely the County's preferred, desired result.

Cash Release

In the event that Sainte Devote tries to avoid a percentage allocation of all costs, and instead seeks a cash release of all liability, that should come at a price. Giving Sainte Devote a release of liability will shift all the burden of future cleanup (and the risk that the current estimates of future costs are wrong) to the County. As the party that caused the environmental damage at the site, Sainte Devote should pay the greatest share of the cleanup and not be able to avoid the risk of future cost overruns. You have two options here: (1) Extract a significant payment from Sainte Devote--\$15 to \$18 million dollars, with a full release; or (2) a slightly smaller payment of \$13 to \$16 million dollars, but insist on a reopener clause—if the overall site cleanup exceeds \$20 million, Sainte Devote agrees to return to the table at some point in the future to revisit the allocation percentage or agree to new funding.

Ability to Pay

The County is aware that Sainte Devote is an ongoing, international mining company with significant assets. The County has no doubt that Sainte Devote can simply write a check with a gold star for \$20 million. The County, on the other hand, is relatively broke.